

ATTORNEY GENERAL
STATE OF MONTANA

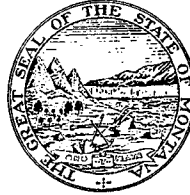
Senate Local Govt. Comm.

Exhibit No. 7

Date 3-9-2011

Bill No. HB 494

Steve Bullock
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

March 5, 2010

RECEIVED

MAR 08 2010

Mr. Roger Millar, President
Montana Association of Planners
435 Ryman Street
Missoula, MT 59802

Re: Request for Opinion

Dear Mr. Millar:

Enclosed is a draft Attorney General's Opinion regarding the following questions:

1. Does the term "subdivision" under the Subdivision and Platting Act refer only to a division of land for the purpose of providing a "residential dwelling"?
2. Does the provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record?

Please review the opinion draft and forward any comments or proposed modifications to me by April 2, 2010. After I have reviewed your response and made any changes, a final draft will be submitted to the Attorney General for his consideration.

Because this is only a draft that has not yet been approved by the Attorney General, it is not intended for general distribution and is being sent to interested parties at this time only for the purpose of receiving comments.

If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris D. Tweeten".

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym
Enc.

DRAFT

VOLUME ____

OPINION NO. ____

SUBDIVISION AND PLATTING ACT -

SUBDIVISIONS -

ZONING AND PLANNING -

MONTANA CODE ANNOTATED - Sections 1-2-101, -105(3), 76-3-101 to -105, -102, -103(4), (15), -204, -205(2), -208;

OPINIONS OF THE ATTORNEY GENERAL - 52 Op. Att'y Gen. No. 5 (2008), 45 Op. Att'y Gen. No. 12 (1993), 40 Op. Att'y Gen. No. 57 (1984), 39 Op. Att'y Gen. No. 74 (1982);

- HELD:
1. The term "subdivision" under the Subdivision and Platting Act does not refer only to a division of land for the purpose of providing a "residential dwelling."
 2. The provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" does not apply to the construction or conveyance of more than one building, structure or improvement on a single tract of land.

March 5, 2010

Mr. Fred Van Valkenburg
County Attorney
200 W. Broadway
Missoula, MT 59802-4292

Dear Mr. Van Valkenburg:

You have requested my opinion on questions that I have rephrased as follows:

1. Does the term "subdivision" under the Subdivision and Platting Act refer only to a division of land for the purpose of providing a "residential dwelling"?

2. Does the provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record?

Your letter informs me that your office and the Missoula Office of the City Attorney disagree over the answers to the above questions. As both offices advise the joint city-county Office of Planning and Grants, you are requesting an Attorney General's opinion. I have also received a letter from the Missoula City Attorney detailing the City's position.

I

The Montana Subdivision and Platting Act ("the Subdivision Act"), Mont. Code Ann. §§ 76-3-101, et. seq., generally requires local review and approval of all subdivisions. Under the Act,

"Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

Mont. Code Ann. § 76-3-103(15).

When interpreting the Subdivision Act, I construe the statutes consistently with the expressed purposes of the Act as articulated by the Legislature and the Montana Supreme Court. 40 Op. Att'y Gen. No. 57 (1984), citing Mont. Code Ann. § 76-3-102. The Montana Supreme Court refuses to read exceptions into the Act which would subvert the purposes expressed in Mont. Code Ann. § 76-3-102. Mills v. Alta Vista Ranch, 2008 MT 214, ¶ 18, 344 Mont. 212, 217, 187 P.3d 627, 631. Therefore, where no specific exception applies, the presumption is no such exception is intended. Id.

Because I may not read exceptions into the Act, I cannot read a "residential dwelling" requirement into the definition of a "subdivision" nor simply assume that divisions for non-residential purposes are exempt. This is particularly true where, as here, implication

of such an exception might significantly undermine the purposes of the Act. A subdivision for a commercial rather than a residential purpose could reasonably be expected to implicate any of the purposes of the Act separately stated in Mont. Code Ann. § 76-3-102.

Neither the definition of "subdivision" nor any other language in the Act uses the term "residential" or directly speaks to the uses for which the divided land will be put in a way that would imply that the Act applies only when the subdivided lots are to be put to residential use. A "subdivision" includes a division of land "in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed," and there is no separate restriction or exemption within the Act limiting subdivisions for rent or lease to "residential dwellings." A "subdivision" under the Act is therefore not limited to divisions of land intended to be "residential dwellings."

II

Under the Subdivision Act,

a "division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.***

Mont. Code Ann. § 76-3-103(4). Part 2 of the Subdivision Act, however, lists a number of actions that are exempt from the Act's provisions despite the fact that they might otherwise fit within the definition of a "division of land." Your second question involves one of these exemptions.

The exemption found at Mont. Code Ann. § 76-3-204 states:

The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

Missoula County argues that the exemption in this provision is limited to a conveyance of one or more parts of a single building on a single tract of record. The City, on the other hand, argues that the provision exempts both several buildings and single buildings. Thus, under the City's interpretation, a developer could construct and sell, rent or lease

several buildings on a single tract of record without subdivision review. For the reasons that follow, it is my opinion that the exemption at Mont. Code Ann. § 76-3-204 is limited to the sale, rent or lease of one or more parts of a single building on a single tract of record.

As noted above, I must construe the Subdivision Act with an eye toward achievement of the Act's objectives. Therefore, I must "narrowly [construe] expressly stated exemptions and exceptions." Alta Vista, ¶ 18. I must also read statutes together in a coherent manner if possible, giving full force and effect to each provision. Mont. Code Ann. § 1-2-101; Oster v. Valley County, 2006 MT 180, ¶ 17, 333 Mont. 76, 81, 140 P.3d 1079, 1083 ("[T]he Legislature does not pass meaningless legislation, and accordingly, this Court must harmonize statutes relating to the same subject, as much as possible, giving effect to each").

If the language of a statute is unambiguous, then of course it controls. Shelby Distrib. v. DOR, 2009 MT 80, ¶ 18, 349 Mont. 489, 206 P.3d 899. The exemption in question refers to: "one or more parts of a building, structure, or other improvement" (Emphasis added.) Thus when read narrowly, the plain language of the exemption applies only to one building. The City, though, argues that while the exemption refers to "a building," it should be construed as including multiple buildings on the same tract because in interpreting statutes the singular can be construed to include the plural. Mont. Code Ann. § 1-2-105(3).

Your question arises against the backdrop of Attorney General Greely's opinion in 40 Op. Att'y Gen. No. 57 (1984). The question presented was whether construction on a single tract of land of 48 four-plex housing units for residential purposes constituted a "division of land" and whether the exemption at Mont. Code Ann. § 76-3-204 applied. At the time of the opinion, Mont. Code Ann. § 76-3-204 read as follows:

The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

Attorney General Greely concluded that the proposed development constituted a division of land because it would create at least 48 "parcels. . . in order that title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed." He further concluded that Mont. Code Ann. § 76-3-204 was inapplicable, because the term "situated" in the exemption referred only to the sale, rental or lease of an "existing building." Id. at

232-33 (citing to 39 Op. Att'y Gen. No. 74 (1982)). The opinion did not analyze whether Mont. Code Ann. § 76-3-204 was limited to a single building.

The next year the Legislature, apparently reacting to Attorney General Greely's opinion, deleted the phrase "situated on one or more parcels of land" and added the words "whether existing or proposed" to the exemption. The clear purpose of this amendment was to extend the exemption to all conveyances of a part of a building regardless of whether the building currently exists or was proposed for future construction. 45 Op. Att'y Gen. No. 12 (1993); Lee v. Flathead County, 217 Mont. 370, 373, 704 P.2d 1060, 1063 (1985) (construing the amendment to clarify that the Subdivision Act applies both to existing and to new buildings). In this respect, the amendment had the effect of overruling Attorney General Greely's opinion, but only to the extent of its holding that Mont. Code Ann. § 76-3-204 applied only to existing buildings.

Attorney General Greely observed that the construction of 48 four-plexes would be "a housing development" that would "inevitably result in various social and economic impacts on the community." He found that "this is the precise type of development which the Legislature intended should be submitted for local review under the Act." 40 Op. Att'y Gen. No. 57 at 234. Such a "housing development" specifically affects the "overcrowding of land," "congestion in the streets," the "preservation of open space," as well as "public requirements" such as "adequate light, air, water supply, sewage disposal, parks and recreation areas [and] ingress and egress." Mont. Code Ann. § 76-3-102. These concerns require that Mont. Code Ann. § 76-3-204 be narrowly construed to apply only to a single building, whether existing or proposed.

The City points to an unofficial letter of advice issued by an attorney in this office on February 27, 1995. In that letter, the attorney opined that the 1985 legislation had overruled 40 Op. Att'y Gen. No. 57 (1984) in its entirety. Then, applying the interpretive guideline that the singular may be construed to include the plural, Mont. Code Ann. § 1-2-105(3), the attorney concluded that the reference in Mont. Code Ann. § 76-3-204 to "building" in the singular included the plural "buildings" as well, thereby extending the reach of the exemption to multiple buildings on the same tract. For the reasons that follow, I disagree with that analysis. The February 27, 1995, letter of advice and any later statements based on it therefore should no longer be deemed authoritative.

The argument that the reference to "building" in the singular should be construed to include the plural "buildings", based on Mont. Code Ann. § 1-2-105(3), is not persuasive. The term "building", as used in the singular in this statute, is not ambiguous. There is no language in the Subdivision Act that suggests that "building" in this context should mean anything other than a single structure. Maxims such as "the singular includes the plural" are not inflexible rules, but rather guidelines to be applied judiciously to aid in the

ultimate pursuit of the intention of the legislature where the language used is unclear. See, e.g., 52 Op. Att'y Gen. No. 5, ¶ 16 (2008). They should not be applied to create ambiguity where none otherwise exists, because "ambiguity must be apparent from the statutory language itself." In Re Reppert, 84 B.R. 37 (E.D. Penn. 1988); see also Mont. Sports Shooting Ass'n v. State, 2008 MT 190, ¶ 34, 344 Mont. 1, 185 P.3d 1003 (the Court "may not create [a statutory] ambiguity where none exists . . .") (Nelson, J., dissenting). Maxims also should not be blindly applied where their use would produce results at odds with the objectives of the legislation. See K. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed, as reprinted in 2A Sutherland Statutory Construction at 539 (5th Ed. 1993) (noting that for every canon there is an equal opposite canon and opining that canons are guidelines that can only be properly used in ways that otherwise support the text and policy of the statute).

Construing Mont. Code Ann. § 76-3-204 to allow the conveyance of several buildings on a single tract of land without subdivision review would create a loophole that swallows the general rule that conveyances by rent or lease are "subdivisions" and subject to review under the Act. Mont. Code Ann. § 76-3-103(15); see 45 Op. Att'y Gen. No. 12 (construing Mont. Code Ann. § 76-3-204 as exempting condominiums would "swallow the general rule" that condominiums are subdivisions subject to review); Thornton v. Flathead Co., 2009 MT 367, ¶ 22, 353 Mont. 252, 259 (refusing to create a "wholesale blanket exemption" from subdivision review for condominiums proposed on parcels created prior to the Act's enactment). Given the express purposes of local subdivision review stated in Mont. Code Ann. § 76-3-102, it is hard to believe, for example, that the legislature would have intended to allow construction of a development such as the one considered in 40 Op. Att'y Gen. No. 57 (1984)--48 four-plexes totaling 192 dwelling units on a tract of less than 20 acres--without subdivision review.

This conclusion is consistent with the decision of the Montana District Court for the Twenty-First District in Rose v. Ravalli Co., Ravalli County Cause No. DV-05-516, 2006 Mont. Dist. LEXIS 1072 (hereafter "Rose"). The Roses, owners of a guest house/lodge business, proposed to construct four small cabins on their parcel, detached from the existing lodge facilities. The County determined that the proposed cabin construction constituted a subdivision that must undergo County subdivision review. The Roses' disagreed, arguing, in part, that the proposal was exempt from subdivision review pursuant to Mont. Code Ann. § 76-3-204.

The Ravalli County District Court analyzed the history and interpretation of Mont. Code Ann. § 76-3-204 in detail, including the Attorney General Opinions cited here by the City. The Court also relied on the legislative history of Mont. Code Ann. § 76-3-204,

which "indicates that the statute was amended to include 'whether existing or proposed' in order to exempt a single building containing duplexes or multi-family rental units from subdivision review." Rose at 14. The Court determined that "[t]he interpretation of § 76-3-204 as [including the rental of one or portions of multiple buildings] would render the portion of § 76-3-208 addressing subdivisions created by rent void of meaning." These factors, along with the requirement to interpret exemptions narrowly, led Judge Langton to conclude that Mont. Code Ann. § 76-3-204 exempts only "a single building" from subdivision review. Rose at 8-14.

The City has suggested 13 examples of proposed developments that would have to undergo subdivision review if Mont. Code Ann. § 76-3-204 is construed as applying to only a single building. Some of these examples are clearly exempt from subdivision review, such as divisions on lands owned by the University of Montana. Mont. Code Ann. § 76-3-205(2). Others present facts that go well beyond the scope of the present request, and as to these I express no opinion here.

THEREFORE, IT IS MY OPINION:

1. The term "subdivision" under the Subdivision and Platting Act does not refer only to a division of land for the purpose of providing a "residential dwelling."
2. The provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" does not apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record.

Sincerely,

STEVE BULLOCK
Attorney General

sb/cdt/jym

OFFICE OF THE CITY ATTORNEY

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2009-057

September 11, 2009

Attorney General Steve Bullock
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

Re: Subdivision law status of multiple buildings/structures for rent or lease under the same ownership on same tract, parcel or platted lot of land

Dear Attorney General Bullock:

The purpose of this letter is to provide additional information, perspective and opinion concerning County Attorney Fred VanValkenburg's August 17, 2009 letter requesting an attorney general opinion. County Attorney VanValkenburg requests an opinion concerning whether a subdivision submittal and review is required for multiple buildings/structures under the same ownership located on the same tract, parcel or platted lot of land that are available for lease or rent. In the first paragraph of his letter County Attorney VanValkenburg states "Missoula County and the City of Missoula have different interpretations of the law with respect to what constitutes a subdivision created through rent or lease of a portion of a parcel" of land pursuant to the Montana Subdivision and Platting Act.

Initially, I would like to note and emphasize that the City's interpretation concerning the same property owner being able to own more than one rental structure on the same parcel of land is the interpretation provided to the City by more than one Montana state government department as well as more than one Montana state government attorney including attorneys at the Montana Attorney General's office. A February 27, 1995 letter from the Montana Attorney General's Office discussing the 1985 state legislative amendment to Mont. Code Ann. § 76-3-204 as well as rule of statutory construction Mont. Code Ann. § 1-2-105 (3) stating that the singular includes the plural is a significant part of the guidance and instruction received from the Attorney General's Office

The primary attorney I frequently consulted and brainstormed with pertaining to the provisions and applicability of the Montana Subdivision and Platting Act is Rich M. Weddle of the Montana Department of Commerce, Local Government Assistance Division, Community Technical Assistance Program. Mr. Weddle was primarily responsible for several land use publications pertaining to land use law, including but not limited to: 1) *Montana's Subdivision and Surveying Laws and Regulations*, 17th ed. (December 1995); 2) *Montana's Annexation and Planning Statutes*, 13th ed., (September 1999); and 3) *Montana Planning and Zoning Law Digest : A Comprehensive Summary of Judicial Decisions and Attorneys General Opinions Relating to the Law of Planning and Zoning in Montana*, 2nd ed. (September 2000).

Also, over the years, I have consulted and brainstormed with several staff attorneys at the Montana Attorney General's Office concerning the interpretation of various provisions of the Montana Subdivision and Platting Act. Discussions included but were not limited to the issue of whether a property owner could have more than one rental structure in the same ownership on the same tract, parcel, or platted lot of land.

An important historical starting point for discussion of this topic is 40 Op. Att'y Gen. No. 57 (1984), which discussed at p. 4, the 1984 inapplicability to the specific factual circumstances presented of the Montana Subdivision and Platting Act, subdivision exemption Mont. Code Ann. § 76-3-204 entitled *Exemption for conveyances of one or more parts of a structure or improvement* and went on to hold:

A developer's construction of 48 four-plexes, to be used as rental occupancy buildings, on a tract of land owned by the developer is a 'subdivision,' and consequently must be submitted for local review under the subdivision and Platting Act.

This attorney general opinion was issued to me as the Missoula City Attorney. It arose out of concern that Bill and Dennis Curran were proposing 48 four-plexes or 192 residential dwelling units on a large tract of vacant South Hills land without voluntarily going through subdivision review. The City at that time was in part concerned after construction the Currans would after the fact attempt to subdivide the land in order to sell various four plexes. The City desired the development proposal go through subdivision review prior to construction of the four plexes because of the hillside development storm drainage, road construction, lack of public park land dedication, significant sizable residential population increase type development issues. After Attorney General Greely issued his opinion, the Currans abandoned their proposed development and moved to Nevada. The proposed project was never pursued by anyone and no development proposal even approaching that size has since been attempted without subdivision review.

However, within a year of the issuance of the AG opinion the 1985 (49th) Montana State Legislature pursuant to SB 354 (Laws of Montana, Vol. I, Ch. 500, p. 961) amended subdivision exemption Mont. Code Ann. § 76-3-204 "[e]xemption for conveyances of one or more parts of a structure or improvement" pursuant to legislation sponsored, as I recall, by Senator Joe Mazurek. Mont. Code Ann. § 76-3-204 MCA was amended to:

76-3-204. Exemption for conveyances of one or more parts of a structure or improvements. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land as that term is defined in this chapter, and is not subject to the requirements of this chapter.

The underlined language is the new 1985 language. The amendment became effective immediately upon passage and approval on April 16, 1985.

After the 1985 Legislature adopted SB 354 subsequent Montana Code Annotated Annotations commonly had several annotation statements cautioning that the specific Montana Attorney General Opinion discussed in the annotation was an "Opinion rendered prior to 1985 amendment of 76-3-204 MCA." This cautionary warning was set forth in reference to annotation references to 40 Op. Att'y Gen. No. 57 as well as for 41 Op. Att'y Gen. No. 3 (1985). Pursuant to current 2008 Montana Code Annotated Annotations the cautionary statement "[o]pinion rendered prior to 1985 amendment of 76-3-204" appears numerous times. For example, see annotations for: 1) Mont. Code Ann. § 76-3-103 *Definitions* - the cautionary note occurs twice, once with respect to 41 Op. Att'y Gen. No. 3 and once with respect to 40 Op. Att'y Gen. No. 57; 2) Mont. Code Ann. § 76-3-202 *Exemption for structures on complying subdivided lands* - with respect to 41 Op. Att'y Gen. No. 3; 3) Mont. Code Ann. § 76-3-204 *Exemptions for conveyances of one or more parts of a structure or improvement* - the cautionary note appears twice, once with respect to 41 Op. Att'y Gen. No. 3 and once with respect to 40 Op. Att'y Gen. No. 57; 4) Mont. Code Ann. § 76-3-297 *Divisions of land exempted from review but subject to survey requirements and zoning regulations-exemptions-fees for examination of division* - in reference to 41 Op. Att'y Gen. No. 3 and 5) Mont. Code Ann. § 76-3-208 *Subdivisions exempted from surveying and filing requirements but subject to review provisions* - with reference to 41 Op. Att'y Gen. No. 3. Thus, the cautionary note pertaining to the 1985 amendment to subdivision exemption statute 76-3-204 appears at least seven times in the annotations for the Montana Subdivision and Platting Act.

More specific and more compelling is the enclosed February 27, 1995 letter from the Montana Attorney General's Office indicating the 1985 amendment to the subdivision exemption statute 76-3-204 effectively overruled 40 Op. Att'y Gen. No. 57. During Montana Attorney General Joe Mazurek's tenure the letter from Clay R. Smith, Solicitor for the Montana Attorney General's Office, was issued pertaining to the application of Montana Subdivision and Platting Act statutory exemption 76-3-204 and its applicability to multi-family residential structures involving 18 residential structures on an 11.45 acre parcel with multiple buildings that were to be retained in a single ownership. In the letter, p. 1, 1 ¶, Solicitor Smith states:

You have requested an Attorney General's Opinion concerning whether 1985 Montana Laws chapter 500 (codified at Mont. Code Ann, section 76-3-204 (1993) effectively overruled 40 Op. Att'y Gen. No. 57, at 229 (1984). Because the 1985 amendment had that effect, it has been determined that issuance of a formal opinion is unnecessary.

(Emphasis added.)

In the final paragraph of his letter Solicitor Smith states:

Your letter also asked whether the exemption in section 76-3-204 applies to a project involving multiple units—here 18 residential structures located on an 11.25 acre parcel. As was implicit in 40 Op. Att'y Gen. No. 57 and otherwise warranted by ordinary rules of statutory construction (Mont. Code Ann. section 1-2-105(3) (1993), use of the singular in 'building, structure, or other improvement' includes the plural under the circumstances

here. The purpose of section 76-3-204 is to exclude from subdivision review transitions which involve only the conveyance of parts of the building, and I see nothing in the provision's language which suggests that the exemption is forfeited merely because a landowner conveys interests in more than one building located on a parcel of land.

(Emphasis added.)

Solicitor Smith in part references and relies on Mont. Code Ann. § 1-2-105 in his letter. The pertinent part of this statute setting forth rules of statutory construction provides:

1-2-105. General definitional rules -- verb tense, gender, and number. The following rules apply in this code:

...
(3) The singular includes the plural and the plural the singular.

(Emphasis added.)

The State of Montana Department of Commerce's publication *Montana's Subdivision and Surveying Laws and Regulations*, 17th ed. (December 1995) p. 48, states:

V. Construction of Multiple-unit Residential or commercial Structures for Rent. A developer's construction of 48 four-plexes to be used as rental occupancy buildings on a tract of land owned by the developer is a 'subdivision' which must be submitted for local review under the Act, 40 Op. Att'y Gen. No. 57 (1984) (Note: this holding has been negated by the subsequent amendment of Section 76-3-204, MCA, (Sec. 1, Ch. 500.1, 1985). See letter of advice to Jim Nugent Esq., from Solicitor Clay R. Smith, February 27, 1985).

(Emphasis added.) (See excerpt enclosed.)

Obviously the City has relied on the legal guidance, advice and instruction of multiple, knowledgeable state attorneys from multiple state agencies on its interpretation of the Montana Subdivision and Platting Act to the effect that currently a property owner owning multiple buildings/structures on the same tract, parcel or platted lot does not have to go through subdivision review in order to rent or lease multiple buildings/structures in the same ownership on the same tract, parcel or lot.

The Ravalli County District Court decision that County Attorney VanValkenburg relies on does not address, discuss or analyze the above identified information and legal analysis. Most importantly, the decision absolutely fails to note and discuss the rule of statutory construction set forth in Mont. Code Ann. § 1-2-105 which explicitly states in pertinent part "(3) The singular includes the plural." (Emphasis added.) The decision omits discussion of this important rule of statutory construction expressly set forth in Montana statutes for the explicit purpose of interpreting Montana statutes. The decision was

apparently written without knowledge of Mont. Code Ann. § 1-2-105(3). At p. 14 of the decision the court notes and emphasizes that the word "building" in the statute is singular in section Mont. Code Ann. § 76-3-24. If any party to the litigation had informed the court of Mont. Code Ann. § 1-2-105(3) which provides "the singular includes the plural" the court very likely would have reached a different conclusion.

In its decision the Ravalli County District Court is not thorough enough in identifying important applicable law and pertinent legal analysis. The court's decision has not addressed the legal analysis and information provided above herein. Significant legal shortcomings in the decision include failure to note Mont. Code Ann. § 1-2-105(3) and Montana State Legislative history immediately after 40 Op. Att'y Gen. 57 was issued. The court's decision is clearly legally distinguishable and inapplicable to the current legal issue presented to you by County Attorney Van Valkenburg.

As I understand it, with respect to same owner multiple buildings/structures on the same tract, parcel or platted lot of land each available for rent or lease, County Attorney VanValkenburg advocates the following factual circumstances are required to go through subdivision review:

1. Commercial/professional office complexes that have multiple buildings in single ownership located on the same tract, parcel or platted lot;
2. Apartment complexes that have more than one residential structure in single ownership located on a single tract, parcel or platted lot. This potentially affects the Missoula Housing Authority as well as other housing corporations that provide low to moderate income apartment living for lease or rent located in multiple structures on the same parcel in the same ownership;
3. Multiple four-plex structures in single ownership located on a single tract, parcel or platted lot;
4. Multiple duplex structures in single ownership located on a single parcel or platted lot;
5. Multiple single family structures in single ownership located on a single parcel or platted lot;
6. A single apartment, four-plex or duplex, if there is a detached parking garage, carport and/or storage shed for each apartment in single ownership located on a single tract, parcel or platted lot;
7. Multiple mini-storage buildings in single ownership located on a single tract, parcel or platted lot;
8. Multiple commercial retail buildings in single ownership located on a single tract, parcel or platted lot;
9. Multiple industrial buildings in single ownership located on a single tract, parcel or platted lot;
10. Single family residential rentals where the rental involves a detached garage in the same ownership located on the same tract, parcel or platted lot; but the buildings or structures are separate and independent;

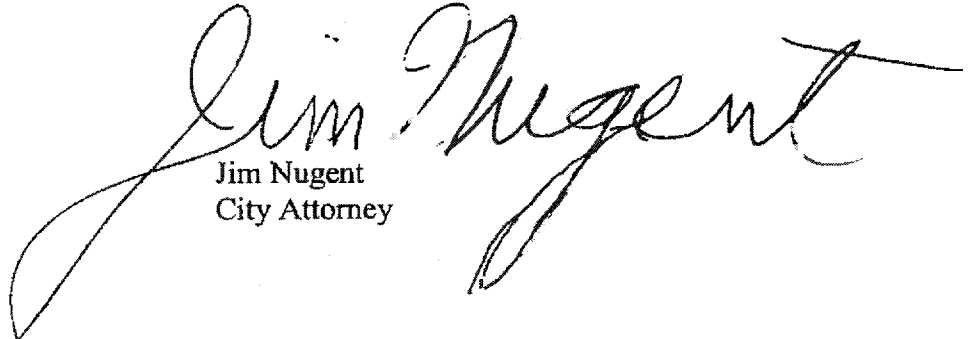
11. Multiple University of Montana residential family dwelling buildings located on South Maurice at the X's as well as at the multiple residential housing complex buildings located along South Higgins south of the University of Montana soccer field and track fields.;
12. Several University detached residential student dormitories on the main University of Montana campus (there are approximately six to eight separate, detached residential dormitories on the main campus);
13. Missoula County fairgrounds separate, detached structures (some of which are available for rent or lease, such as the hockey ice skating complex or the building at the entrance on South Avenue regularly rented for social gatherings, the commercial buildings, the livestock buildings, the stables, etc.

In conclusion, the City of Missoula requests that you determine, conclude and hold that the multiple state attorneys from multiple agencies who have advised the City of its current legal interpretation identified herein have done so correctly. The City requests that the interpretation of these state attorneys be upheld as a correct legal interpretation of the application of the Montana Subdivision and Platting Act exemption statutorily established pursuant to Mont. Code Ann. § 76-3-204.

Thank you in advance for considering the information, legal analysis and perspectives set forth herein.

Sincerely,

CITY ATTORNEY'S OFFICE



Jim Nugent
City Attorney

JN:kmr

c: John Engen, Mayor
Bruce Bender, CAO
Roger Millar, OPG Director
Mike Barton, Mary McCrea, Denise Alexander, OPG
Chris Tweeten, Assistant Attorney General
Fred VanValkenburg, Missoula County Attorney
Marnie McClain, James McCubbin, Missoula County Attorney's Office
Steve King, Public Works Director
Kevin Slovarp, City Engineer
Dan Jordan, Public Works
Legal Staff